

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEW JERSEY
3 Civil Action No. 09-197

100 FEB 23 A 10:31

4 In Regard to the Matter of:

UNITED STATES
DISTRICT COURT

5 Bayside State Prison
6 Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

7 THOMAS COLLIER

8 - vs -

9 WILLIAM H. FAUVER, et al.,

10 Defendants.

11 * * * *

12 FRIDAY, JANUARY 23, 2009

13 * * * *

14 BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 12:30 PM.

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1 JUDGE BISSELL: I am now reopening
2 proceedings in the matter of Thomas Collier, docket
3 number 09-197.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Collier.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Collier was housed in F Unit and he
18 witnessed Officer Baker's death. In fact, he
19 witnessed him being stabbed at the podium. He
20 testified, however, and I find that this testimony is
21 accurate, that he was afraid to acknowledge to
22 Internal Affairs when examined on that very same day
23 that he had witnessed this and did not respond
24 positively in that respect.

25 The inmates in F Unit as a whole were

1 out of F Unit for a long time on the 30th of July.
2 Pretty close to 12 hours. And this is not surprising
3 because they were taken, first, to Internal Affairs
4 for interrogation and then later to the gym to await
5 their return.

6 While it's not expressly set forth in
7 this record, my best recollection is that the
8 facility was also searched at that time. There is no
9 reason it wouldn't have been.

10 P-163 reflects that the SOGs went into
11 the unit to extract the inmates at approximately 1:10
12 PM and began those extractions at that time. Mr.
13 Collier, like other inmates, went to Internal Affairs
14 and then to the gym. It appears that he was not one
15 of the first persons taken to the gym because upon
16 examination of videotape, which I'll discuss a little
17 more completely in a few minutes, his testimony was
18 that he was not seated toward the front of the gym,
19 but that it was at least half full by the time he
20 arrived.

21 Mr. Collier said repeatedly and
22 insisted on both direct and cross-examination that
23 the position which he was directed to assume in the
24 gymnasium was with his upper torso bent from the
25 waist out from his body at a right angle or even more

1 than that with his head down and his hands clasped
2 behind his back, the back of his head.

3 However, the film exhibits of F Unit,
4 and there were three of them shown in succession from
5 a time period of shortly after two o'clock PM until
6 after 6:30 PM, showed that none of the persons seated
7 in the gym on that day brought in from F Unit, and by
8 the latter of those tapes this would have included
9 Mr. Collier, were required to sit in any such
10 position. They were expected to remain still and
11 they did so for the most part, but they were seated
12 essentially as we've come to call it Indian style on
13 the floor, legs crossed, hands down at the sides and
14 resting on the gym floor.

15 At 8:35 according to Exhibit D-544A the
16 infirmary was summoned to the gym because Mr. Collier
17 had chest pains and trouble breathing. I find that
18 this was brought on not by him having been subjected
19 for several hours to this seating position which he
20 described, but rather from increasing anxiety and
21 exhaustion. I find that his testimony is credible
22 that he may well have had to have been dragged or
23 assisted in moving to the back of the gym from his
24 seat on the floor to await the arrival of the nurse,
25 but I do not find it is credible that he was slammed

1 up against the grate and sustained cuts to the back
2 of his head as he testified here. That type of
3 conduct is totally inconsistent with that observable
4 on the three films that were shown with regard to the
5 manner in which one or more inmates was indeed
6 removed from the line on the floor for one reason or
7 another.

8 Now, I realize that the event that
9 occurred with Mr. Collier's discomfort occurred at
10 about 8:30 PM, approximately two hours after the
11 conclusion of the last of the videotapes that we
12 watched, but I find no basis to conclude that somehow
13 or other after those tapes were no longer being
14 taken, that the SOG officers on the very first day of
15 this operation with a high level of administrative
16 and civilian scrutiny woulde suddenly change their MO
17 dramatically, force the inmates into much more
18 uncomfortable seating positions, drag them across the
19 floor and bounce them off the grate. Furthermore, if
20 indeed he had been cut on the head and treated, I
21 find no reason why there would not be a nurse's note
22 about it. Once again, we are at the very outset of
23 these proceedings, he was treated in the gym area
24 initially and I find no evidence, although he asserts
25 it, that there was any sort of master coverup of

1 injuries of this sort which included the nurses
2 either as willing or unwilling participants.

3 In Mr. Collier's case he was well cared
4 for in the infirmary, his arrival there was
5 documented, he was kept there overnight as a
6 precaution in light of his difficulties in breathing
7 and chest discomfort and returned to F Unit on the
8 next day.

9 He testifies as to another event on or
10 about the fifth of August, it's determined from
11 P-164, a log indicating that SOG entered F Unit on
12 that day as well. They were extracting him from his
13 cell and undertaking a strip search and at that point
14 ordered him to undertake the very customary activity
15 of spreading his legs, squatting and otherwise making
16 himself susceptible to a rectal body cavity search.
17 He resisted that order, from his own testimony, and
18 questioned why it was that he particularly would have
19 to be so searched because he wasn't concealing any
20 weapon there. However, the officers insisted, as
21 they had every right to do, to complete their
22 procedure which included a rectal area search and one
23 of them using his baton prodded him in that area,
24 without penetration, to enforce the demand that Mr.
25 Collier place himself in such a position that that

1 rectal search could be conducted. I find that at
2 most there was used a modest force necessary to
3 achieve this valid penal purpose.

4 Mr. Collier testified to other
5 incidents of harassment to which he was subjected
6 after the incidents mentioned above. However, they
7 do not rise to the level of the infliction of
8 punishment as encompassed in these proceedings.
9 Among other things, there was no discernible physical
10 impact or even potential injury that resulted.

11 Mr. Collier is a man with mental
12 difficulties that, among other things, required
13 ongoing medication to curb schizophrenia. This was
14 indeed a long-standing condition which he brought with
15 him to Bayside. Frankly, it does not take a great
16 leap of faith or any expertise, I think, for me to
17 conclude that his anxiety from witnessing Officer
18 Baker's murder, his anxiety of being questioned about
19 it and, in fact, lying to Internal Affairs that he
20 hadn't observed it, and his lengthy sitting on the
21 gym floor, in a situation obviously of considerable
22 uncertainty and stress for him, are what led to his
23 chest and breathing problems, as I mentioned before.

24 As to the other incident, his
25 incredulity that he would be suspected of harboring a

1 weapon in a body cavity led him to question and
2 resist this very legitimate routine search request.
3 And indeed, of course, he was further embarrassed at
4 being prodded in the rectum, accompanied by some very
5 crude comments, once again for the purpose of getting
6 him to comply.

7 Mr. Collier evokes from me as well as
8 from anybody else a measure of concern for the very
9 difficult mental condition that he carries with him.
10 But the events in question here neither rise to the
11 level of the use of excessive force or, indeed, the
12 infliction of punishment at all.

13 Finally, although not every item of
14 evidence has been discussed this this opinion/report,
15 all evidence presented to the Special Master was
16 reviewed and considered.

17 For the reasons set forth above, I
18 recommend in this report that the district court
19 enter an order and judgment of no cause for action
20 with regard to Thomas Collier.

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1 C E R T I F I C A T E
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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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19 Theresa O. Mastroianni
20 Theresa O. Mastroianni, C.S.R.
21 Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: February 10, 2009
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